

Merit Systems Protection Board

§1201.136

Counsel, including a motion for extension or termination of the stay.

(c) *Place of filing.* A Special Counsel stay request must be filed with the Clerk of the Board.

(d) *Initial filing and service.* The Special Counsel must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing in a request for a stay may not be filed by electronic mail or by using the Internet filing option.

(e) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(f) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(g) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in §1201.5 of this part are satisfied.

[62 FR 48451, Sept. 16, 1997, as amended at 63 FR 42686, Aug. 11, 1998; 68 FR 59863, Oct. 20, 2003]

§1201.135 Contents of stay request.

The Special Counsel, or that official's representative, must sign each stay request, and must include the following information in the request:

- (a) The names of the parties;
- (b) The agency and officials involved;

(c) The nature of the action to be stayed;

(d) A concise statement of facts justifying the charge that the personnel action was or will be the result of a prohibited personnel practice; and

(e) The laws or regulations that were violated, or that will be violated if the stay is not issued.

§1201.136 Action on stay request.

(a) *Initial stay.* A Special Counsel request for an initial stay of 45 days will be granted within three working days after the filing of the request, unless, under the facts and circumstances, the requested stay would not be appropriate. Unless the stay is denied within the 3-day period, it is considered granted by operation of law.

(b) *Extension of stay.* Upon the Special Counsel's request, a stay granted under 5 U.S.C. 1214(b)(1)(A) may be extended for an appropriate period of time, but only after providing the agency with an opportunity to comment on the request. Any request for an extension of a stay under 5 U.S.C. 1214(b)(1)(B) must be received by the Board and the agency no later than 15 days before the expiration date of the stay. A brief describing the facts and any relevant legal authority that should be considered must accompany the request for extension. Any response by the agency must be received by the Board no later than 8 days before the expiration date of the stay.

(c) *Evidence of compliance with a stay.* Within five working days from the date of a stay order or an order extending a stay, the agency ordered to stay a personnel action must file evidence setting forth facts and circumstances demonstrating compliance with the order.

(d) *Termination of stay.* A stay may be terminated at any time, except that a stay may not be terminated:

(1) On the motion of an agency, or on the deciding official's own motion, without first providing notice and opportunity for oral or written comments to the Special Counsel and the individual on whose behalf the stay was ordered; or

(2) On the motion of the Special Counsel without first providing notice and opportunity for oral or written